

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA
AT OMAHA, NEBRASKA

GUILLERMO HERRERA, III,)	
)	
Plaintiff,)	
)	
VS.)	Case No.
)	8:15-cv-426-JMG-CRZ
UNION PACIFIC RAILROAD)	
COMPANY, a Delaware)	
corporation,)	
)	
Defendant.)	

DEPOSITION OF CARLOS DIAZ

JUNE 9, 2016

REPORTED BY:	IMHOF AND ASSOCIATES, INC.
	COURT REPORTERS AND VIDEOGRAPHERS
VICTORIA IMHOF WERTZ, RPR	
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	91730
Job No. 160609V4	

Page 2	Page 4
<p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 FOR THE DISTRICT OF NEBRASKA</p> <p>3 AT OMAHA, NEBRASKA</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9 GUILLERMO HERRERA, III,)</p> <p>10) Plaintiff,)</p> <p>11) VS.)Case No.</p> <p>12)8:15-cv-426-JMG-CRZ</p> <p>13 UNION PACIFIC RAILROAD)</p> <p>14 COMPANY, a Delaware)</p> <p>15 corporation,)</p> <p>16)</p> <p>17 Defendant.)</p> <p>18</p> <p>19 DEPOSITION OF CARLOS DIAZ,</p> <p>20 taken on behalf of the Plaintiff, at 9431 Haven</p> <p>21 Avenue in the City of Rancho Cucamonga,</p> <p>22 California, commencing at 4:00 p.m. and concluding</p> <p>23 at 5:07 p.m. on JUNE 9, 2016, before VICTORIA</p> <p>24 IMHOF WERTZ, RPR, CSR No. 7999.</p> <p>25</p>	<p>1 I N D E X</p> <p>2 WITNESS EXAMINATION PAGE</p> <p>3 CARLOS DIAZ</p> <p>4 BY MR. COX 6</p> <p>5 BY MR. SCHMITT 51</p> <p>6</p> <p>7 FURTHER EXAMINATION PAGE</p> <p>8 BY MR. COX 62</p> <p>9</p> <p>10 EXHIBITS</p> <p>11 (None)</p> <p>12</p> <p>13 INFORMATION REQUESTED</p> <p>14 (None)</p> <p>15</p> <p>16 UNANSWERED QUESTIONS</p> <p>17 (None)</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
Page 3	Page 5
<p>1 APPEARANCES</p> <p>2 For the Plaintiff: BRENT COON & ASSOCIATES, PC</p> <p>3 BY: JAMES L. COX, JR., ESQ.</p> <p>4 3801 East Florida Avenue</p> <p>5 Suite 905</p> <p>6 Denver, Colorado 80210</p> <p>7 (303) 756-3243</p> <p>8</p> <p>9 For the Defendant, UNION PACIFIC RAILROAD COMPANY</p> <p>10 Union Pacific LAW DEPARTMENT</p> <p>11 Railroad: BY: TORRY N. GARLAND, ESQ.</p> <p>12 1400 West 52nd Avenue</p> <p>13 Denver, Colorado 80221</p> <p>14 (303) 405-5402</p> <p>15 - AND -</p> <p>16 LAMSON DUGAN & MURRAY, LLP</p> <p>17 BY: DAVID J. SCHMITT, ESQ.</p> <p>18 10306 Regency Parkway Drive</p> <p>19 Omaha, Nebraska 68114</p> <p>20 (402) 397-7300</p> <p>21</p> <p>22 Also present: Jerry R. Pritchett;</p> <p>23 Christobal Rivero,</p> <p>24 video technician</p> <p>25</p>	<p>13:29:46 1 RANCHO CUCAMONGA, CALIFORNIA</p> <p>13:29:46 2 THURSDAY, JUNE 9, 2016</p> <p>16:00:19 3 4:00 p.m.</p> <p>16:00:22 4</p> <p>16:00:22 5 CARLOS DIAZ,</p> <p>16:00:22 6 called as a witness herein, having</p> <p>16:00:22 7 first been duly sworn, was examined</p> <p>16:00:22 8 and testified as follows:</p> <p>16:00:22 9</p> <p>16:00:28 10 THE VIDEOGRAPHER: This is the beginning</p> <p>16:00:28 11 of media 1 for Carlos Diaz. We are on the record.</p> <p>16:00:33 12</p> <p>16:00:33 13 EXAMINATION</p> <p>16:00:33 14 BY MR. COX:</p> <p>16:00:33 15 Q Mr. Diaz, good afternoon, sir.</p> <p>16:00:35 16 A Good afternoon.</p> <p>16:00:37 17 Q Could you give us your full name and tell</p> <p>16:00:38 18 us where you live.</p> <p>16:00:40 19 A Carlos Diaz. I live in Chandler, Arizona.</p> <p>16:00:47 20 Q Who do you work for now?</p> <p>16:00:49 21 A Union Pacific Railroad.</p> <p>16:00:50 22 Q What is your job with the UP now?</p> <p>16:00:54 23 Excuse me.</p> <p>16:00:55 24 A Track supervisor.</p> <p>16:00:57 25 Q And what gang are you working on?</p>

Page 6

16:01:01 1 A 8501.
 16:01:03 2 Q And what is your job on gang 8501?
 16:01:08 3 A It's to supervise the men and equipment.
 16:01:15 4 That's about it.
 16:01:16 5 Q Is there a part of the gang that you are
 16:01:17 6 responsible for? Or are you one of the overall
 16:01:20 7 supervisors?
 16:01:21 8 A One of two overall supervisors.
 16:01:23 9 Q And who is the other supervisor?
 16:01:26 10 A Joe Linford.
 16:01:29 11 Q And on -- what was your job in July of '15
 16:01:34 12 at the time of Guillermo Herrera's injury?
 16:01:37 13 A Track supervisor.
 16:01:38 14 Q Same position?
 16:01:39 15 A Yes.
 16:01:40 16 Q Same gang?
 16:01:40 17 A Yes.
 16:01:40 18 Q All right.
 16:01:42 19 How do you and Mr. Martinez split up the
 16:01:46 20 supervisory responsibility -- or did you -- in July
 16:01:48 21 of 2015?
 16:01:51 22 A No, we just -- just take care of the gang.
 16:01:54 23 When he is not there or I'm there, we just do
 16:01:57 24 what's necessary to keep the gangs running.
 16:02:00 25 Q Does one supervisor have the front half

Page 7

16:02:02 1 and the back half? Or one rail or another? Is
 16:02:06 2 there any way you all chop up the work on the
 16:02:08 3 gang?
 16:02:09 4 A No, we just -- just work together.
 16:02:11 5 Q Just cosupervise?
 16:02:13 6 A Yes.
 16:02:13 7 Q Okay.
 16:02:19 8 All right.
 16:02:20 9 How long had you worked for the UP?
 16:02:22 10 A Since April 1984.
 16:02:27 11 Q Were you with the UP or SP? Or what's
 16:02:31 12 your history?
 16:02:32 13 A Southern Pacific.
 16:02:34 14 Q Southern Pacific?
 16:02:34 15 A Yes.
 16:02:35 16 Q And then UP?
 16:02:36 17 A Yes.
 16:02:36 18 Q What jobs have you held -- has all of your
 16:02:39 19 time been in the Engineering Department?
 16:02:41 20 A Yes.
 16:02:41 21 Q What jobs have you held?
 16:02:44 22 A From track laborer to track foreman.
 16:02:47 23 Q You worked your way all of the way up?
 16:02:49 24 A Yes.
 16:02:49 25 Q Or at least as high as you probably want

Page 8

16:02:52 1 to go?
 16:02:53 2 A Yes.
 16:02:59 3 Q Okay.
 16:03:06 4 Mr. Diaz, we have talked to a lot of
 16:03:07 5 witnesses today and probably by the time we get to
 16:03:10 6 you in the trial, the jury will have learned a lot.
 16:03:13 7 So I want to kind of get right to it.
 16:03:17 8 How did you learn that Guillermo Herrera
 16:03:19 9 was suffering from a heat injury on July 26th,
 16:03:23 10 2015?
 16:03:24 11 A I just heard it on the radio.
 16:03:27 12 Q From whom?
 16:03:29 13 A I just heard somebody calling for them to
 16:03:33 14 pick up a man to put him in his van to cool him
 16:03:39 15 down.
 16:03:41 16 Q And what did you do when you heard that?
 16:03:50 17 A I just called Bob and told him to meet me
 16:03:55 18 and put him with me and see how he was feeling.
 16:03:59 19 Q Okay.
 16:04:00 20 Let's see if I can find these.
 16:04:07 21 Do -- let's see -- you don't happen to
 16:04:14 22 know -- oh, no, how did you call Bobby Herrera?
 16:04:18 23 Did you call him on the phone or radio?
 16:04:21 24 A Radio.
 16:04:21 25 Q Okay.

Page 9

16:04:30 1 What instructions did you give him?
 16:04:33 2 A To?
 16:04:34 3 Q To Bobby Herrera?
 16:04:36 4 A To meet me at a place called, "Emmet,"
 16:04:41 5 that's a gas station there to transfer him over to
 16:04:44 6 come to me.
 16:04:45 7 Q Why did you do that?
 16:04:47 8 A Because we wanted to see how he was
 16:04:49 9 feeling and I heard that he was -- you know, wasn't
 16:04:53 10 feeling well, so then a supervisor would pick him
 16:04:56 11 up and help him out and see what the problem was.
 16:05:00 12 Q Okay.
 16:05:00 13 Is there any reason -- well, strike that.
 16:05:04 14 Well, I can't -- is there any reason at
 16:05:06 15 that point in time an ambulance was not called for
 16:05:09 16 him?
 16:05:10 17 Or do you know why an ambulance was not
 16:05:12 18 called for him?
 16:05:12 19 A No, no.
 16:05:18 20 Q Okay.
 16:05:18 21 It's the first time that you saw
 16:05:20 22 Guillermo Herrera there at Emmet's gas station?
 16:05:24 23 A Yes.
 16:05:24 24 Q Had you seen him earlier in the day?
 16:05:28 25 A No.

Page 10			Page 12		
16:05:28	1	Q Had you seen him on July 25th, for	16:07:24	1	What happened next?
16:05:31	2	example?	16:07:27	2	A Just took him towards Onaga, about an
16:05:33	3	A I don't remember.	16:07:30	3	hour's drive from where we were at. We just took
16:05:37	4	Q Okay.	16:07:33	4	him in to make sure he stayed cool and had
16:05:37	5	That's a long time ago.	16:07:38	5	something to drink. Get him off the track and get
16:05:40	6	All right.	16:07:43	6	him out of the heat.
16:05:41	7	When you saw Mr. Herrera there at Emmet's	16:07:46	7	Q Where did you take him?
16:05:45	8	gas station, he arrives in Mr. Herrera's van? Am I	16:07:46	8	A To a job briefing in Onaga.
16:05:50	9	right on that?	16:07:50	9	Q That's where we heard a CPI, or the
16:05:51	10	A Yes.	16:07:51	10	container is that has the air conditioning and
16:05:52	11	Q Tell me what observations you made of	16:07:51	11	maybe the foremen's desk and all of that kind of
16:05:55	12	Guillermo Herrera at that time.	16:07:53	12	stuff?
16:05:57	13	A Well, he was sitting on the passenger seat	16:07:54	13	A Yes.
16:05:59	14	of a van and I pulled up with the passenger, so I	16:07:54	14	Q Is that where you were headed with him?
16:06:05	15	can transfer him over to my truck.	16:07:57	15	Or did --
16:06:07	16	Q Did you or Mr. Herrera have to help	16:07:58	16	A That's where all of our vehicles were at.
16:06:12	17	Guillermo Herrera into your truck?	16:07:59	17	It's a job briefing area. We would just take him
16:06:15	18	A Yes, we assisted him getting him into my	16:08:02	18	there.
16:06:19	19	truck. My truck is kind of high. It's a high-rail	16:08:05	19	Q Okay.
16:06:22	20	pickup. So it's kind of high, assisted, falling	16:08:05	20	Do you recall any conversation as you are
16:06:28	21	over or stumbling.	16:08:07	21	driving from Emmet -- is Emmet -- is that on an
16:06:30	22	Q When you say "assisted," what do you mean	16:08:11	22	interstate? Or where is Emmet -- that gas station?
16:06:32	23	by that?	16:08:14	23	Do you remember?
16:06:33	24	A Just grab him by the arm and help him into	16:08:15	24	A It's a highway, but just a common road.
16:06:35	25	the truck.	16:08:21	25	Q Okay.
Page 11			Page 13		
16:06:37	1	Q Okay.	16:08:21	1	You wouldn't -- I have tried to orient
16:06:37	2	Did you speak with him?	16:08:23	2	this a little bit. You wouldn't happen to remember
16:06:38	3	A No, just asked him how he was feeling.	16:08:25	3	what the number of the county road was or
16:06:39	4	Q What did he say?	16:08:28	4	anything?
16:06:41	5	A He just said he was hot.	16:08:29	5	A No, sir.
16:06:42	6	Q Okay.	16:08:29	6	Q Okay.
16:06:45	7	Had you known Guillermo Herrera before to	16:08:30	7	Where -- what siding or what part of the
16:06:47	8	speak with him?	16:08:32	8	track was the gang working on?
16:06:49	9	A In what way?	16:08:34	9	I understand it's spread out over some
16:06:51	10	Q Had you ever talked with him before?	16:08:37	10	distance. But generally, where was the section of
16:06:53	11	I'm trying to see if you can give me a	16:08:39	11	track that you all were working on in relationship
16:06:55	12	comparison to how he was talking at that time	16:08:42	12	to Onaga? Like south? East? West? North?
16:06:58	13	compared to how he talked normally.	16:08:48	13	A I would say north. I'm not positive too
16:07:00	14	A No, I just got on the gang. I was with a	16:08:51	14	much.
16:07:03	15	gang just about two months.	16:08:51	15	Q Okay.
16:07:04	16	Q Okay.	16:08:52	16	In the route -- in the drive from the gas
16:07:05	17	A So I would rather just be familiar myself	16:08:56	17	station at Emmet to the job briefing site, did you
16:07:08	18	with the whole gang. There was 75 people in	16:09:03	18	have a conversation with Mr. Herrera?
16:07:11	19	there.	16:09:06	19	A Just asked how he was feeling and if I had
16:07:12	20	Q Okay.	16:09:09	20	to stop or anything, let me know.
16:07:12	21	So you really didn't have any kind of	16:09:11	21	Q Okay.
16:07:14	22	one-on-one contact with Guillermo to gauge how he	16:09:12	22	A Not much talking.
16:07:18	23	spoke before July 26th?	16:09:15	23	Q Not much talking?
16:07:20	24	A No.	16:09:17	24	A No.
16:07:20	25	Q Okay.	16:09:17	25	Q Okay.

Page 14			Page 16		
16:09:18	1	Did you make any observations of his	16:11:23	1	about it.
16:09:20	2	condition? What was he doing? Was he sleeping?	16:11:24	2	Q Sometime you and Mr. Steely took him to
16:09:23	3	Was he -- what? What observations --	16:11:26	3	the hospital, right?
16:09:27	4	A He was just sitting there. I told him to	16:11:27	4	A Yes.
16:09:29	5	stay awake. I didn't want him going to sleep or	16:11:27	5	Q When was that?
16:09:34	6	anything like that, so I just watched him and asked	16:11:28	6	In other words, how long was he at the job
16:09:37	7	him how he was feeling mostly.	16:11:31	7	briefing site before you all took him to the
16:09:39	8	Q Okay.	16:11:33	8	hospital?
16:09:40	9	Why were you heading to the job briefing	16:11:34	9	A I would say 20 to 30 minutes.
16:09:41	10	place -- job briefing site?	16:11:38	10	Q Okay.
16:09:43	11	A That's where everybody's vehicle was at.	16:11:39	11	And how did he get to the hospital?
16:09:45	12	So I figured if he needed to cool down and that way	16:11:41	12	A I drove him there.
16:09:48	13	he will be there close by his vehicle. That's	16:11:43	13	Q And Mr. Steely told us he got in the back
16:09:53	14	where we meet.	16:11:46	14	seat?
16:09:54	15	Q Where his vehicle was?	16:11:48	15	A Yes.
16:09:56	16	A Yes.	16:11:49	16	Q When you -- was there any conversation
16:09:56	17	Q Okay.	16:11:50	17	with Mr. Herrera -- Guillermo Herrera on the drive
16:09:56	18	Did you have a thought that if he cools	16:11:55	18	to the hospital?
16:09:58	19	down, he would just drive home?	16:11:57	19	A No, because it was only a couple of blocks
16:10:01	20	A No, no, we just thought -- he carpooled	16:11:59	20	away from there.
16:10:03	21	with another guy. Just made sure he was all right.	16:12:01	21	Q Okay.
16:10:08	22	That's all.	16:12:04	22	Did Mr. Herrera remain in your truck the
16:10:08	23	Q I guess my question was: Were you heading	16:12:07	23	whole time you all were at the job briefing site?
16:10:10	24	to get him into the cooling container there at the	16:12:10	24	A Yes.
16:10:14	25	job site? Or where were you going? And why? I	16:12:10	25	Q Did you get out?
Page 15			Page 17		
16:10:18	1	guess is what I'm --	16:12:12	1	A No.
16:10:21	2	A That's where our job briefing place is at.	16:12:12	2	Q Did Bobby Steely come up to the truck?
16:10:24	3	Q Sort of a central location?	16:12:15	3	A Yes.
16:10:27	4	A Yes.	16:12:16	4	Q Did he lean in your window or
16:10:27	5	Q What were your thoughts?	16:12:18	5	Mr. Herrera's window?
16:10:29	6	What were you thinking was going to happen	16:12:19	6	A Mr. Herrera's window.
16:10:30	7	or that you would do when you got there?	16:12:21	7	Q And who made the decision to go to the
16:10:34	8	A I was just making sure he was okay. You	16:12:25	8	hospital?
16:10:36	9	know, just take him there and if he needed any	16:12:26	9	A He did.
16:10:40	10	assistance or anything, if he found anything I	16:12:27	10	Q Mr. Herrera?
16:10:43	11	could do to help him.	16:12:29	11	A Yes.
16:10:45	12	Q Okay.	16:12:29	12	Q And is it your testimony that's the first
16:10:45	13	What happened when you got to the job	16:12:32	13	time he asked to go to the hospital?
16:10:47	14	site -- job briefing site?	16:12:34	14	A Yes.
16:10:50	15	A Well, I went there and then Bob Steely	16:12:36	15	Q Have you ever received any training in
16:10:54	16	came out and tried to figure out how he was	16:12:40	16	heat prevention illness -- heat illness prevention
16:10:59	17	feeling. Looking at him, make sure he was all	16:12:45	17	from the Union Pacific Railroad that you should not
16:11:01	18	right. Talking to him and seeing how he was	16:12:51	18	rely on the person with the heat stress injury to
16:11:03	19	feeling about that.	16:12:55	19	decide whether he should go to the hospital or not?
16:11:05	20	Q Was there a discussion about him going to	16:12:58	20	MR. SCHMITT: Object, form.
16:11:06	21	the hospital at that time?	16:13:02	21	BY MR. COX:
16:11:08	22	A No, we asked him if we needed to. I asked	16:13:02	22	Q Have you ever received that kind of
16:11:10	23	him if he needed to -- "If you feel you need to get	16:13:03	23	training from the UP?
16:11:14	24	going." And he told me he didn't have to go.	16:13:04	24	MR. SCHMITT: Form.
16:11:19	25	Just, "Give me some rest and cool down." That's	16:13:05	25	Go ahead.

Page 18			Page 20		
16:13:07	1	THE WITNESS: No. No, not in that manner,	16:15:01	1	Q When he was in the room in the hospital?
16:13:08	2	no.	16:15:03	2	A There was no doctor there yet. It was
16:13:09	3	BY MR. COX:	16:15:05	3	just a nurse.
16:13:09	4	Q All right.	16:15:07	4	Q Did you talk with her about his medical
16:13:10	5	What conversation was there from the job	16:15:10	5	condition?
16:13:13	6	briefing site to the hospital in Onaga?	16:15:11	6	A No.
16:13:18	7	Did you talk with him? Did Mr. Herrera	16:15:11	7	Q I assume it was a woman.
16:13:20	8	talk with you? Did Mr. Steely say anything? Can	16:15:13	8	Was it a woman?
16:13:24	9	you recall any conversation?	16:15:13	9	A Yes, it was a woman. No, I didn't talk to
16:13:26	10	A No. No, like I said, it was only two	16:15:15	10	her about his condition. Just he felt he was
16:13:28	11	blocks away. So we took him right there.	16:15:19	11	overheated, so she administered some IV to him.
16:13:31	12	Q What happened when you all got to the	16:15:23	12	Q Were you present when that was done, the
16:13:33	13	hospital?	16:15:27	13	IV?
16:13:34	14	You were driving, Bobby is in the back	16:15:27	14	A I wasn't sure -- watching it, no. Because
16:13:37	15	seat, Guillermo Herrera is in the front seat.	16:15:30	15	I had to make my call to the manager, coming in and
16:13:40	16	What happened when you all got to the	16:15:33	16	out, and letting him know what was going on with
16:13:41	17	hospital?	16:15:35	17	the situation.
16:13:42	18	A Well, we took him to the emergency room	16:15:36	18	Q That's part of the question -- part of the
16:13:45	19	door. Then the nurse came out. And we helped	16:15:43	19	reason you were there, I guess, was to check on him
16:13:47	20	him -- Bobby and I and the nurse put him on a	16:15:45	20	and let them know how he was doing; is that
16:13:51	21	wheelchair and wheeled him in.	16:15:47	21	right?
16:13:53	22	Q And did you go in with Mr. Herrera?	16:15:47	22	A Yes.
16:13:55	23	A Yes, I followed him. Yes.	16:15:48	23	Q Part of the reason why you were there was
16:13:58	24	Q Okay.	16:15:50	24	to find out his medical condition so you could
16:13:58	25	And did you go into the room that he was	16:15:53	25	update his supervisors about his medical condition;
Page 19			Page 21		
16:13:59	1	being treated in in the emergency?	16:15:56	1	is that right?
16:14:02	2	A Yes, I stood there by the door.	16:15:56	2	MR. SCHMITT: Form.
16:14:04	3	Q Okay.	16:15:57	3	Go ahead.
16:14:05	4	And did you ever come in the room where	16:15:58	4	THE WITNESS: Well, I cared for him. You
16:14:08	5	Bobby -- where Mr. Herrera was?	16:16:00	5	know, just to make sure he was okay.
16:14:10	6	A Yes, I was standing at the door inside the	16:16:03	6	BY MR. COX:
16:14:12	7	room, yes.	16:16:03	7	Q I understand.
16:14:14	8	Q All right.	16:16:04	8	Explain to me, then, why you have to call
16:14:17	9	What conversations, if any, did you have	16:16:05	9	your supervisors.
16:14:18	10	with any nurses or doctors that were treating	16:16:06	10	A Well, that's what we have got to do, let
16:14:21	11	Mr. Herrera?	16:16:10	11	them know that we have an incident on our gang, we
16:14:25	12	A Just "let me know if he is okay." Because	16:16:12	12	had a man taken to the hospital. They want to know
16:14:30	13	I had to call my manager to let him know that we	16:16:14	13	why.
16:14:33	14	had an incident on the gang. I had to take	16:16:15	14	Q Okay.
16:14:36	15	somebody to the hospital.	16:16:18	15	What happens next while you all were at
16:14:37	16	Q Is part of the reason you are in the room	16:16:21	16	the hospital?
16:14:39	17	to get updated on his medical condition so you can	16:16:21	17	A What do you mean?
16:14:42	18	let your superiors know his medical condition?	16:16:23	18	Q Did a doctor come in? Did you -- did
16:14:45	19	A No, that was the only room that you could	16:16:28	19	you --
16:14:47	20	be there, so I was there.	16:16:28	20	A No, they just administered the IV's.
16:14:48	21	Q That was a bad question.	16:16:33	21	That's what they did for, like, an hour, hour and a
16:14:54	22	Why were you in the room? And why were	16:16:36	22	half or something.
16:14:56	23	you talking to the nurse and doctor about	16:16:37	23	Q And how long were you at the hospital?
16:15:00	24	Guillermo's condition?	16:16:39	24	A Well, a certain amount of times -- it was
16:15:00	25	A When?	16:16:41	25	like from 4:30 and then they released him at 8

Page 22			Page 24		
16:16:46	1	o'clock with the doctor.	16:19:17	1	Q And were those instructions that Dr. Kelly
16:16:48	2	Q Were you there the whole time?	16:19:20	2	gave you or gave Guillermo that he was to be off
16:16:50	3	A Yes.	16:19:24	3	work at least the next day?
16:16:50	4	Q What did you do during that four, five,	16:19:25	4	A For one day is what he told me.
16:16:53	5	six hours that he was there?	16:19:27	5	Q Did he -- we know Dr. Kelly gave a release
16:16:54	6	A I--	16:19:30	6	to return to work form.
16:16:55	7	Q Let me just check. Let's be clear on how	16:19:34	7	Did he give that -- it's a little thing on
16:16:58	8	long he was there at the hospital. Hang on one	16:19:36	8	a prescription pad.
16:17:06	9	second.	16:19:38	9	Did he give that to you? Or did he give
16:17:07	10	The records will reflect that he was	16:19:39	10	that to Guillermo? Who did he give that to?
16:17:08	11	admitted at 4:36 through the emergency room and	16:19:42	11	A He didn't give it to me. I didn't see who
16:17:18	12	discharged at 21:52 -- which is what? 9:52. So he	16:19:44	12	he gave it to.
16:17:32	13	was there a little over five hours.	16:19:46	13	Q Okay.
16:17:35	14	Were you there that whole time?	16:19:51	14	When you left, where did you -- when you
16:17:37	15	A Yes, I was.	16:19:53	15	left the hospital, what did you do?
16:17:38	16	Q What else was done?	16:19:57	16	A I went home. I went back to --
16:17:40	17	What else did you observe being done for	16:19:59	17	Q Okay.
16:17:42	18	Guillermo Herrera in the hospital?	16:20:00	18	A He had one of his friends was there. He
16:17:44	19	A That's all that I observed. They	16:20:02	19	got there at quitting time, about 6:00. His buddy
16:17:47	20	administered the IV. And in the meantime, we had	16:20:07	20	that he rides with, he showed up, too.
16:17:52	21	to do our protocol for our MCC. Then we called the	16:20:10	21	Q Do you know his name?
16:17:57	22	urinalysis lady to check his urine to make sure.	16:20:11	22	Is it Miguel Hernandez?
16:18:02	23	It's what we normally do in our procedures in the	16:20:14	23	A Mike Hernandez.
16:18:05	24	incident.	16:20:16	24	Q Okay.
16:18:05	25	Q So one of the procedures is he was given a	16:20:16	25	What -- did you have to call any other
Page 23			Page 25		
16:18:10	1	urinalysis for blood and alcohol?	16:20:18	1	supervisors that night to fill them in on what was
16:18:16	2	A For any incident, yes.	16:20:21	2	going on pursuant to your protocol?
16:18:17	3	Q Did that come back negative? Do you	16:20:24	3	A No, no, I just -- I let Mike Rolow, my
16:18:20	4	know?	16:20:28	4	manager, that they released him. And they told me
16:18:20	5	A No, they don't inform us of that.	16:20:31	5	to take a day off. He said, "That's fine. Go
16:18:22	6	Q Okay.	16:20:36	6	check up on him."
16:18:23	7	Did you ever speak with his doctor? A	16:20:38	7	Q Did Mike Rolow come to the Onaga area the
16:18:25	8	doctor named Dr. Kelly?	16:20:41	8	next day to investigate?
16:18:27	9	A No, just at the end when they released	16:20:42	9	A Yes.
16:18:28	10	him. It was about eight o'clock and we had to wait	16:20:43	10	Q What did you do the next day?
16:18:32	11	about an hour for the lady -- urine lady to come.	16:20:44	11	We know that July 26th is a Sunday. Out
16:18:36	12	She got lost. So about eight o'clock, they said he	16:20:47	12	there on the job, days of the week really don't
16:18:40	13	can go. And they gave him some tests and pills and	16:20:50	13	matter to you all too much, I gather, right?
16:18:44	14	he should take a day off. And Guillermo was	16:20:54	14	I mean --
16:18:48	15	asking, "Do I get paid?"	16:20:54	15	A Well, I knew it was a Sunday.
16:18:50	16	And I said we would cover to help him with	16:20:56	16	Q Okay.
16:18:52	17	the pay. That was it. The doctor says he needs a	16:20:57	17	So Sunday is the day it occurs.
16:18:59	18	day off, so I said, "Okay. That's fine. We will	16:21:00	18	Mike Rolow shows up on Monday.
16:19:02	19	help him out."	16:21:02	19	What did you do on Monday as it relates to
16:19:03	20	Q What do you mean, "help him out"?	16:21:05	20	Guillermo Herrera?
16:19:05	21	A Well, just go home -- help him out with	16:21:07	21	A Well, I drove Mike Rolow to go fill out a
16:19:08	22	pay or help him whatever he needs to get better.	16:21:10	22	form, you know, the accident -- that we filled out
16:19:11	23	Q Okay.	16:21:13	23	52032. Went to Onaga to his hotel room, so he
16:19:12	24	A We are not going to put him back out into	16:21:18	24	could fill it out.
16:19:14	25	the heat until he feels like he can do his work.	16:21:19	25	Q Was that Monday, the next day? Or was

Page 26		Page 28	
16:21:21	1 that Tuesday, two days later? What's your memory?	16:23:28	1 called back and he said he was going to go see his
16:21:24	2 A I'm not sure what day.	16:23:31	2 own doctor, don't bother picking him up.
16:21:26	3 Q Okay.	16:23:35	3 Q What happened the next couple of days?
16:21:30	4 When you -- and you went to Mr. Herrera's	16:23:37	4 A That's all I heard from him. I never
16:21:32	5 motel room to --	16:23:38	5 heard from him again.
16:21:35	6 A I drove Mike Rolow there.	16:23:39	6 Q Did you ever hear from Mr. Herrera or
16:21:37	7 Q Did you go into the room --	16:23:42	7 anyone else about his efforts to get back to
16:21:39	8 A I went to say hello to him and ask him how	16:23:45	8 El Paso where he lived?
16:21:42	9 he was feeling. He said he was feeling good, and	16:23:46	9 A Yes, they -- if I would buy him a plane
16:21:45	10 then I walked back out.	16:23:50	10 ticket.
16:21:47	11 Q He said he was feeling good?	16:23:51	11 Q What was that?
16:21:48	12 A Yes, in shorts, and offered to us water.	16:23:52	12 A If I would buy him a plane ticket to go
16:21:52	13 And I already had a drink, so Mike said, we have to	16:23:54	13 home, but I don't have that authorization to buy
16:21:56	14 fill out this 52032 form.	16:23:58	14 employees plane tickets.
16:21:58	15 Q Were you present at all when the 52032	16:23:59	15 Q Okay.
16:22:02	16 form or personal injury report form was filled	16:23:59	16 So he had called and asked you to buy him
16:22:04	17 out?	16:23:59	17 a plane ticket to go home?
16:22:04	18 A No, I have them outside in my truck.	16:24:01	18 A That's correct.
16:22:06	19 Q Bill Herring was also there; is that	16:24:01	19 Q And you are not permitted under the rules
16:22:08	20 right?	16:24:03	20 to do that?
16:22:08	21 A Yes.	16:24:04	21 A No.
16:22:09	22 Q He is the claims manager or risk	16:24:04	22 Q Did you refer him to someone or take that
16:22:11	23 management representative of the UP?	16:24:07	23 request of his to someone else who had the
16:22:13	24 A Yes, that's correct.	16:24:09	24 authority to do that?
16:22:14	25 Q Was he there when Mr. Herrera was filling	16:24:10	25 A Yeah, it was about nine o'clock when he
Page 27		Page 29	
16:22:16	1 out his P.I. report?	16:24:12	1 called me on that. So I told him I would try to
16:22:19	2 A No, we were both outside.	16:24:15	2 get ahold of Mike so he could get the
16:22:20	3 Q So it's Mike Rolow -- and to your	16:24:17	3 authorization. And I couldn't get ahold of him.
16:22:23	4 recollection, it's Mike Rolow and Guillermo Herrera	16:24:20	4 Q How about the next day? Did you do
16:22:26	5 filling out the personal injury report?	16:24:22	5 anything to try to help him get back to El Paso?
16:22:28	6 A Yes.	16:24:25	6 A I don't know if he ever got ahold of Mike.
16:22:29	7 Q All right.	16:24:28	7 But they never told me anything. I didn't hear
16:22:40	8 What happened after that?	16:24:32	8 anything more about it.
16:22:41	9 I guess Mr. Rolow came back to your truck.	16:24:34	9 Q Let's see.
16:22:43	10 And tell me what happened next.	16:24:36	10 All right. Anything else that you can
16:22:45	11 A That was it in relation to that.	16:24:37	11 think about -- or recall about Guillermo Herrera
16:22:48	12 Q Okay.	16:24:42	12 and his heat illness -- what the doctor -- strike
16:22:49	13 Tell me what else happened that -- in the	16:24:46	13 that.
16:22:52	14 days that follow regarding Mr. Herrera, what else	16:24:48	14 Did you ever learn from anybody on the
16:22:57	15 happened?	16:24:52	15 Union Pacific Railroad that Guillermo Herrera
16:22:58	16 A Well, I was told that -- that evening, I	16:24:55	16 suffered a heat exhaustion -- that the doctors
16:23:00	17 got a call from Mike that Bill Herring set up to	16:25:02	17 diagnosed him as having a heat exhaustion?
16:23:05	18 see the UP doctor, make sure he was all right -- in	16:25:05	18 Did you ever learn that?
16:23:10	19 Kansas City, and then have me call him to arrange	16:25:06	19 A No.
16:23:12	20 for the next day -- I'm not sure what day it	16:25:06	20 Q Did anybody on the UP update you or the
16:23:15	21 was -- to pick him up in the morning and take him	16:25:09	21 other people on the gang about what had happened to
16:23:17	22 to Kansas City.	16:25:11	22 Guillermo Herrera or anything like that?
16:23:18	23 Q You were going to take him to Kansas City?	16:25:16	23 A No.
16:23:21	24 A Yes, yes. He agreed when I talked to	16:25:16	24 Q Was there a safety stand-down or job -- a
16:23:23	25 Mr. Herrera. And a couple of hours later, he	16:25:20	25 discussion at the job briefing the next morning

Page 30		Page 32	
16:25:22	1 about Mr. Herrera, what had happened and what could	16:27:33	1 need to go to the hospital, we will take you."
16:25:25	2 be done to prevent it from happening again?	16:27:36	2 BY MR. COX:
16:25:28	3 A Yes, we covered almost every morning	16:27:36	3 Q Do you have any explanation as to how it
16:25:30	4 because of the heat. We always cover it and go	16:27:44	4 can be that within a matter of minutes, he is in
16:25:33	5 over it. And you know, you have got to take care	16:27:51	5 the truck -- in your truck at the job briefing
16:25:35	6 of yourself and you are doing those yourself.	16:27:58	6 site, a couple of minutes later, back at the
16:25:39	7 Something comes up, mention something to somebody	16:28:02	7 hospital and getting IVs and getting a diagnosis of
16:25:42	8 let us know so we can get you out of there.	16:28:08	8 heat exhaustion? Do you have any explanation as to
16:25:45	9 Q It sounds to me like the UP leaves it to	16:28:11	9 how that could have occurred?
16:25:48	10 the employee to decide how the employee is feeling	16:28:13	10 MR. SCHMITT: Form. Foundation.
16:25:51	11 and doing in the heat? Is that --	16:28:14	11 THE WITNESS: No, no. I'm not a doctor.
16:25:55	12 A Yeah.	16:28:17	12 I don't know why she did what she does.
16:25:55	13 MR. SCHMITT: Just a minute.	16:28:35	13 BY MR. COX:
16:25:56	14 Are you finished?	16:28:35	14 Q And do you have the medical training or
16:25:57	15 MR. COX: Yeah.	16:28:39	15 expertise to determine if a person is suffering
16:25:58	16 MR. SCHMITT: Objection to the form.	16:28:42	16 from heat exhaustion or not?
16:25:59	17 Mischaracterizes the testimony.	16:28:45	17 A No, I'm not an expert.
16:26:01	18 Go ahead.	16:29:00	18 Q And now, you say you followed
16:26:02	19 THE WITNESS: It is work. But I'm not a	16:29:02	19 Guillermo Herrera into the hospital room.
16:26:03	20 doctor to know, you know, just if they'd tell us	16:29:08	20 Did he ever invite you to come into the
16:26:06	21 they are feeling overheated or they are feeling	16:29:10	21 room?
16:26:10	22 exhausted. "Let us know and we will put you in a	16:29:14	22 "Come on with me, Mr. Diaz, into the
16:26:12	23 cool spot and take care of you."	16:29:17	23 treatment room"?
16:26:15	24 So it is work and it is hot. So we do the	16:29:19	24 Did he ever do anything like that?
16:26:18	25 best we can to protect the man.	16:29:20	25 A No, I just followed him by instincts.
Page 31		Page 33	
16:26:23	1 BY MR. COX:	16:29:39	1 Q Have you ever received any training from
16:26:23	2 Q Is there -- what training or guidance have	16:29:40	2 the Union Pacific Railroad about what's called a
16:26:25	3 you received from Union Pacific Railroad about what	16:29:44	3 "whistle-blower statute" or "FRSA," Federal
16:26:27	4 steps to take if an employee has tried to cool down	16:29:49	4 Railroad Safety Act 20109 that basically instructs
16:26:32	5 in a truck or in a van but is still expressing	16:29:53	5 employees of the Union Pacific Railroad not to
16:26:37	6 symptoms of weakness, sweating heavily, headache,	16:29:57	6 delay or interfere with an employee's medical
16:26:41	7 any of those symptoms?	16:30:00	7 treatment? Have you received any training on that
16:26:43	8 What training have you received as to what	16:30:03	8 subject?
16:26:44	9 should be done then with the employee?	16:30:05	9 A Well, not -- no, not like that.
16:26:47	10 A Well, we just try to cool them down. And	16:30:20	10 Q During the earlier part of July 26th,
16:26:49	11 we -- I ask them or Joe does ask if they need any	16:30:24	11 2015, I think I asked you -- but you don't have a
16:26:54	12 medical assistance, you know, we will provide it.	16:30:28	12 memory of going back to the cleanup or cleanup crew
16:26:57	13 If you wanted to go, we will take you. There's no	16:30:33	13 to see how they were doing? You didn't go back
16:26:59	14 problem with taking someone to the hospital if they	16:30:35	14 there?
16:27:01	15 asked to go. We don't prevent them from not going.	16:30:36	15 A Not that day, no.
16:27:05	16 Q Have you ever received any training from	16:30:38	16 Q Okay.
16:27:06	17 the Union Pacific Railroad about whether or not it	16:30:39	17 What do you know about an assistant
16:27:12	18 is reasonably safe to rely on the person in heat	16:30:42	18 foreman, Scott Nicholson? Do you know him? Do you
16:27:15	19 stress to decide whether or not he should go to the	16:30:44	19 remember him?
16:27:18	20 hospital?	16:30:46	20 He was the assistant foreman of the
16:27:19	21 MR. SCHMITT: Same objection. Asked and	16:30:49	21 cleanup crew.
16:27:23	22 answered.	16:30:51	22 A Yes, he was new to the gang, but -- I'm
16:27:23	23 THE WITNESS: No, we just -- hopefully,	16:30:54	23 not certain how long he had been with us, but he
16:27:27	24 everything goes for the best. Hopefully he tells	16:30:56	24 was new to the gang.
16:27:29	25 us how he is feeling. And then we mention, "If you	16:30:58	25 Q Okay.

Page 34		Page 36	
16:31:01	1 Did you ever receive any information that	16:33:35	1 Mr. Nicholson was letting them use it or not? You
16:31:05	2 Mr. Nicholson was not using the P-car all of the	16:33:38	2 haven't talked to them?
16:31:10	3 time to declip the rail? Did you ever learn that?	16:33:39	3 A No, not that day I didn't.
16:31:14	4 MR. SCHMITT: Objection to the form.	16:33:41	4 Q Did you at any other time learn about
16:31:15	5 THE WITNESS: What do you mean?	16:33:43	5 whether Mr. Nicholson was letting them use the
16:31:16	6 BY MR. COX:	16:33:46	6 P-car or not?
16:31:16	7 Q Did Mr. Guillermo Herrera, Mr. Dickison,	16:33:47	7 A They do use it. I have never not known
16:31:21	8 Mr. Mansing -- did any of those people ever come up	16:33:49	8 that they haven't used it.
16:31:26	9 to you, or to your knowledge any other foreman, and	16:34:42	9 Q Let me read to you from the medical record
16:31:30	10 advise that Mr. Nicholson was not using the P-car	16:34:46	10 at Community Health Care System -- that's the
16:31:36	11 to declip the rail? That he was making them do it	16:34:50	11 hospital in Onaga.
16:31:40	12 by hand?	16:34:52	12 This is a dictation by John Kelly, M.D.,
16:31:41	13 A There is some hand work required on that	16:34:55	13 the doctor who summarizes the treatment that
16:31:42	14 job, so whether they use it specifically 100	16:34:59	14 Mr. Herrera received at the hospital.
16:31:46	15 percent, no -- not using the P-car at all times.	16:35:04	15 The assessment or diagnosis is "Heat
16:31:49	16 Q Why is the P-car there?	16:35:06	16 exhaustion, hypokalemia secondary to above" -- and
16:31:52	17 A To help them assist. It carries tools and	16:35:12	17 I'm not even sure what that is -- third, "weakness
16:31:57	18 extra clips and biscuits that get damaged in the	16:35:15	18 secondary to above."
16:32:00	19 back when they replace it. Get the quality in the	16:35:18	19 He says in here, he was given a
16:32:03	20 rear.	16:35:20	20 prescription for K-Dur and instructed to take one
16:32:04	21 Q But its primary purpose is to declip the	16:35:25	21 tablet daily. He is not to work tomorrow. If he
16:32:08	22 rail; is that right?	16:35:27	22 was feeling better the next day, he may resume
16:32:09	23 A It clips, also.	16:35:30	23 work, but at light duty and staying in a cool
16:32:10	24 Q Okay.	16:35:33	24 environment, and then gradually may resume his
16:32:11	25 To clip or declip the rail?	16:35:37	25 normal duties, as tolerated.
Page 35		Page 37	
16:32:12	1 A Yes.	16:35:40	1 He is advised that because he has had heat
16:32:13	2 Q That's its primary purpose?	16:35:42	2 exhaustion, he may be more prone to it this summer
16:32:16	3 A Yes.	16:35:47	3 and in the future, so he needs to use extra
16:32:37	4 Q And if the P-car is operating properly, do	16:35:49	4 caution. Then he says, "His supervisor is with him
16:32:41	5 you expect it to be used on the cleanup gang to	16:35:52	5 the whole time and is aware of this and will assist
16:32:43	6 clip or declip the rail?	16:35:54	6 in monitoring how he progresses."
16:32:46	7 A It's there to assist. It doesn't do the	16:35:58	7 Did you talk with Dr. Kelly about
16:32:48	8 work 100 percent. You know, there's hand work	16:36:02	8 assisting and monitoring how Mr. Herrera progressed
16:32:52	9 required back there by everybody who is back there	16:36:06	9 over the next couple of days?
16:32:55	10 working.	16:36:08	10 A That's when I mentioned earlier that we
16:32:58	11 Q How does hand work assist the P-car?	16:36:11	11 will watch him and we will help him out. We do
16:33:01	12 I'm not sure I understand.	16:36:13	12 what it takes to make sure he is in good shape.
16:33:04	13 A Sometimes the clips won't come off with	16:36:33	13 Q Who on the gang is responsible for
16:33:06	14 the machine, so you have got to do it by hand, do	16:36:36	14 determining the heat index that will be present on
16:33:09	15 it with a clipper -- hand declippers.	16:36:39	15 the gang each day? Who calculates that?
16:33:13	16 Q Okay.	16:36:45	16 A Well, we have a chart that we go by. We
16:33:13	17 Do you have any knowledge about whether or	16:36:50	17 take the air temperature and humidity and we go
16:33:14	18 not the P-car was used at all on the morning of	16:36:54	18 from there.
16:33:19	19 July 26th, 2015?	16:36:55	19 Q But who is "we"? Who actually does it for
16:33:21	20 A It was with him. Whether they were -- I'm	16:36:58	20 gang 8501 in July?
16:33:25	21 sure they were using it. But that's all I know on	16:37:00	21 A Sometimes it's Bob Steely or the
16:33:28	22 that.	16:37:02	22 timekeeper. We mentioned in the job briefing, it's
16:33:29	23 Q Okay.	16:37:05	23 going to be this particular heat index, we are
16:33:31	24 But you haven't talked to any of the	16:37:10	24 required to take certain amount of breaks in a
16:33:32	25 members of that cleanup crew about whether	16:37:14	25 certain amount of time per hour.

Page 38			Page 40		
16:37:17	1	Q Okay.	16:40:28	1	index values by up to 15 degrees Fahrenheit."
16:37:17	2	Do you know how to do that?	16:40:32	2	Have you ever been trained by the UP to
16:37:18	3	A Well, yeah, if I look at the chart, I	16:40:34	3	consider when you were calculating the heat index
16:37:22	4	can.	16:40:38	4	whether it's sunny or not?
16:37:24	5	Q Okay. Let's look at the chart.	16:40:40	5	MR. SCHMITT: Object to the form.
16:37:47	6	Okay. Here is -- I think we have marked	16:40:42	6	Improper question. Foundation.
16:37:49	7	this as Exhibit 15. And I have turned to the chart	16:40:45	7	THE WITNESS: No, I don't recall that.
16:37:53	8	in there.	16:41:00	8	No.
16:37:54	9	Is that the chart you are talking about?	16:41:32	9	BY MR. COX:
16:37:55	10	I tell you what, first look at that.	16:41:32	10	Q What is the purpose of the heat index?
16:37:58	11	That's the policy safety meeting process. Heat	16:41:34	11	What is your understanding of the purpose of the
16:38:02	12	Stress Prevention, that's a UP document.	16:41:37	12	heat index?
16:38:05	13	Are you familiar with that document?	16:41:41	13	A Well, just -- this chart that we have to
16:38:07	14	A Yes, it is.	16:41:44	14	give the guys proper breaks, make sure that they
16:38:08	15	Q And is this the (indicating) heat index	16:41:47	15	can handle that particular hour, if it doesn't
16:38:11	16	chart that you are referring to in that document?	16:41:50	16	change. If it changes, take longer breaks and make
16:38:15	17	A Yes.	16:41:54	17	sure they are getting the right -- proper rest,
16:38:19	18	Q Using that document, let's assume that on	16:41:56	18	drinking their water. That's what I understand it
16:38:28	19	July 26th at 9:52 in the morning, the ambient	16:41:59	19	is.
16:38:46	20	temperature is 79 degrees Fahrenheit.	16:41:59	20	Q And are there different procedures that
16:38:50	21	So if you want to -- if you want to -- all	16:42:01	21	have to take place if the heat index is in the
16:38:55	22	right.	16:42:05	22	yellow range or the high heat procedure or the
16:38:55	23	So let's start with 79 degrees. And we	16:42:10	23	extreme heat procedure -- are there different
16:38:58	24	were advised that you averaged up. And the	16:42:12	24	procedures on the UP that should be followed when
16:39:02	25	relative humidity is 79 degrees.	16:42:14	25	that heat index, for example, is in the red or
Page 39			Page 41		
16:39:06	1	A Okay.	16:42:18	1	extreme heat portion of the heat index?
16:39:09	2	Q Okay.	16:42:24	2	A Well, it would be longer breaks because it
16:39:10	3	Now, is it true that someone working on	16:42:26	3	gets that much hotter. So longer breaks. Make
16:39:14	4	the track -- strike that.	16:42:29	4	sure the body gets acclimated to the heat so we
16:39:17	5	Is it true that on the UP, the temperature	16:42:34	5	take longer breaks.
16:39:19	6	on the track is higher than the ambient	16:42:36	6	Q How important is it to you as a supervisor
16:39:22	7	temperature?	16:42:39	7	of that gang that you know the accurate heat index
16:39:24	8	A Yes.	16:42:42	8	at any time during the day to determine what extra
16:39:25	9	Q By -- do you have any training as to how	16:42:45	9	procedures need to be taken?
16:39:28	10	much higher the temperature on the track is?	16:42:48	10	A Well, we do follow the heat index. So if
16:39:30	11	A No, it varies.	16:42:52	11	it's going to stay in the red at a certain time,
16:39:32	12	Q Varies depending on what?	16:42:56	12	it's going to continue staying in the red until we
16:39:35	13	A How hot it gets.	16:43:00	13	quit, so that's what we follow.
16:39:38	14	Q Okay.	16:43:02	14	Q What was the practice on 8501 when the
16:39:38	15	What would -- if you were calculating the	16:43:04	15	heat index was in the red or extreme heat?
16:39:41	16	heat index, what would you add to the ambient	16:43:07	16	A Well, make sure that they take the proper
16:39:44	17	temperature to determine the heat index for people	16:43:09	17	breaks, they are getting their water breaks, we
16:39:47	18	that were working on a track? How many degrees?	16:43:13	18	provide food for them, make sure they are taking
16:39:49	19	A No, we don't -- I don't add that in there.	16:43:16	19	everything -- keep their body -- that they are
16:39:52	20	If it's -- I just take what the ambient temperature	16:43:20	20	feeling good.
16:39:55	21	is.	16:43:21	21	Q How is that done? How do you all do that
16:39:57	22	Q Okay.	16:43:24	22	specifically? Do the supervisors walk by and
16:40:16	23	Let me show you Exhibit 19.	16:43:26	23	monitor the guys?
16:40:22	24	This is an OSHA document that advises	16:43:29	24	Or is the word spread through foreman and
16:40:24	25	that, "Exposure to full sunshine can increase heat	16:43:32	25	assistant foreman? How do you all do that on the

Page 42		Page 44	
16:43:35	1 gang?	16:45:41	1 Mr. Gallop about what breaks were provided for
16:43:37	2 Here is why I'm asking: The employees,	16:45:44	2 people on the cleanup crew?
16:43:39	3 laborers, machine operators, they really -- do they	16:45:46	3 Not in general terms that morning, but
16:43:43	4 have a way to calculate the heat index at any	16:45:49	4 specifically.
16:43:46	5 particular time?	16:45:49	5 A No, everybody has the same rules. That
16:43:47	6 A Well, like I said, it's not going to cool	16:45:51	6 one is -- has different rules from the front to the
16:43:50	7 down any. If it's already in the red, it's going	16:45:54	7 back. We all do the same thing.
16:43:53	8 to stay in the red through our day, through the	16:45:56	8 Q How do you all take the 15-minute break?
16:43:55	9 rest of the shift. So we stay with that.	16:46:00	9 Does the whole gang shut down for 15 minutes every
16:43:58	10 Q Okay.	16:46:03	10 hour and stop and water up?
16:43:58	11 How are the laborers and machine operators	16:46:05	11 A Well, we start at different -- the front
16:44:00	12 on the gang advised of what the heat index is?	16:46:06	12 gang will start work and back gang will rest
16:44:06	13 A Well, they know it's hot. We go through	16:46:11	13 without doing anything until we break out. We are
16:44:09	14 our secondary job briefings, their assistant	16:46:14	14 a very large gang. We have different machines.
16:44:14	15 foreman. As the temperature rises, we know it gets	16:46:17	15 They do different jobs. So long as they go
16:44:17	16 up there, so we take our mandatory breaks, what we	16:46:21	16 through, the assistant foreman up front will watch
16:44:20	17 need.	16:46:23	17 his time. If they have been working for an hour,
16:44:20	18 Q Okay.	16:46:26	18 they will take a break. Then the back crew hasn't
16:44:22	19 What mandatory breaks do you take when	16:46:28	19 done anything yet until we break out in the front.
16:44:23	20 it's extreme heat on the heat index?	16:46:31	20 So it's a long process before the back crew even
16:44:27	21 A Here is the -- usually take 15 to 20	16:46:35	21 starts work during that day. They will wait out
16:44:29	22 minutes per hour.	16:46:37	22 there two hours until we get the front half of the
16:44:32	23 Q Okay.	16:46:40	23 gang going.
16:44:32	24 And how is that instituted on the gang?	16:46:41	24 Q I see.
16:44:37	25 How do you all implement that on the gang? How is	16:46:41	25 A We go out there eight o'clock and the back
Page 43		Page 45	
16:44:40	1 that enforced on the gang?	16:46:45	1 gang or cleanup crew could be out there 10 o'clock
16:44:42	2 A Through our assistant foremen and foremen	16:46:48	2 until before they even start.
16:44:44	3 that we talk about at the morning at our morning	16:46:51	3 Q After you've been out there for a day like
16:44:48	4 job briefings to make sure we are getting them,	16:46:53	4 July 25th, when you all returned from the siding to
16:44:50	5 make sure we are taking our breaks.	16:46:57	5 the main line track to begin work again, doesn't
16:44:53	6 Q And in the case of the cleanup crew, that	16:47:00	6 everybody in the gang resume work in about the same
16:44:56	7 would have fallen to Scott Nicholson, that	16:47:03	7 position that they left the day before?
16:44:59	8 responsibility?	16:47:05	8 A No. No, because we have to get the track
16:44:59	9 A Yes.	16:47:08	9 back in order for them to run trains, so we have
16:45:00	10 Q Above him, who was the foreman of that	16:47:11	10 got to have all of our work complete that night.
16:45:02	11 cleanup crew?	16:47:13	11 Q Okay. I understand that.
16:45:05	12 A Steve Gallop.	16:47:14	12 But on the 26th, after working on the
16:45:06	13 Q Have you ever talked to Steve Gallop or	16:47:17	13 25th, you send the machines into the siding. The
16:45:10	14 Scott Nicholson about what breaks were provided for	16:47:21	14 morning of the 26th, you bring the machines out of
16:45:13	15 the workers on the cleanup crew that day?	16:47:24	15 the siding to start working again.
16:45:17	16 A No, we covered every morning to make sure	16:47:28	16 Does the gang resume working -- the
16:45:20	17 they are taking their breaks. We trust that they	16:47:31	17 different machines resume working on the track
16:45:23	18 do it. We do ask employees, "Are you guys taking	16:47:34	18 where they stopped the day before?
16:45:27	19 your breaks?"	16:47:36	19 A Yes, the front end will have to do their
16:45:28	20 They say, "Yeah, we are taking our breaks.	16:47:38	20 work in order to break out before their rear
16:45:30	21 We are getting our water. We are getting our	16:47:41	21 machines to start their work.
16:45:33	22 fruit."	16:47:44	22 So the cleanup crew will sit a couple of
16:45:34	23 Q But I'm interested more specifically on	16:47:47	23 hours almost every morning before they even start.
16:45:37	24 July 26th, 2015.	16:47:50	24 Q Okay.
16:45:39	25 Did you ever talk with Mr. Nicholson or	16:47:53	25 Well, let's say they have all been working

Page 46		Page 48	
16:47:55	1 a couple of hours. The whole gang has been working	16:49:31	1 them -- we ask them how they are feeling. "Are you
16:47:58	2 for two or three hours. Everybody is working.	16:49:34	2 guys getting your breaks every hour?"
16:48:00	3 Everybody is moving.	16:49:37	3 They will let you know, trust me, if they
16:48:05	4 How -- for example, is it the policy that	16:49:39	4 are not getting their rest.
16:48:07	5 the whole gang stops for 15 minutes in this high	16:49:41	5 Q Again, just to clarify, you had not been
16:48:10	6 heat -- or extreme heat condition -- everybody	16:49:43	6 back to the cleanup crew the morning of July 26th?
16:48:14	7 stops for 15 minutes and will resume 15 minutes	16:49:47	7 A No, not that morning.
16:48:17	8 later?	16:49:48	8 Q So you didn't have any way of knowing
16:48:18	9 MR. SCHMITT: Objection, asked and	16:49:50	9 whether they were getting their breaks or not?
16:48:18	10 answered. He has already answered.	16:49:53	10 MR. SCHMITT: Himself, personally?
16:48:20	11 Go ahead.	16:49:54	11 MR. COX: Correct.
16:48:21	12 BY MR. COX:	16:49:55	12 MR. SCHMITT: Asked and answered.
16:48:21	13 Q I mean --	16:49:56	13 But go ahead.
16:48:22	14 A No, no, because we start at different	16:49:58	14 THE WITNESS: No, no, I did not go back
16:48:24	15 times.	16:50:00	15 there that day.
16:48:25	16 Q Why could that not be the policy to make	16:50:01	16 BY MR. COX:
16:48:27	17 sure that everybody on the gang gets a 15-minute	16:50:01	17 Q Do you think that -- does your training on
16:48:31	18 break every hour?	16:50:03	18 the UP lead you to believe that the policy of a
16:48:32	19 MR. SCHMITT: They already do.	16:50:05	19 15-minute break every hour when it's extreme heat
16:48:33	20 Object to the form. Improper	16:50:09	20 pursuant to the heat index -- do you think that's a
16:48:35	21 hypothetical. Foundation.	16:50:12	21 good idea?
16:48:37	22 Go ahead.	16:50:13	22 MR. SCHMITT: Object to form. Foundation.
16:48:38	23 THE WITNESS: I don't understand what you	16:50:15	23 He is not an expert witness.
16:48:40	24 are trying to ask me.	16:50:16	24 MR. COX: Just his training from the UP.
16:48:41	25 ///	16:50:20	25 THE WITNESS: Well, the person is
Page 47		Page 49	
16:48:41	1 BY MR. COX:	16:50:22	1 responsible for himself. You know, if you are
16:48:41	2 Q Okay.	16:50:26	2 tired and it's been 20 minutes, you need a water
16:48:42	3 You don't have any personal knowledge that	16:50:28	3 break, go ahead and take one. It doesn't have to
16:48:43	4 that cleanup crew was given a 15-minute break every	16:50:31	4 be on the hour every hour. We don't implement
16:48:47	5 hour, do you?	16:50:34	5 that.
16:48:49	6 A No.	16:50:34	6 We just said, "If you need your break, we
16:48:49	7 Q You don't know for sure that that	16:50:38	7 want to make sure you are getting your breaks.
16:48:51	8 occurred?	16:50:41	8 It's required. Get your proper rest to cool down."
16:48:51	9 A That day?	16:50:44	9 We don't want nobody to overheat. We
16:48:53	10 Q Yes, sir.	16:50:46	10 don't want to see no injuries. We don't want that.
16:48:53	11 A The 26th?	16:50:49	11 Joe and I are adamant about we were doing our
16:48:55	12 Q Yes.	16:50:52	12 things right.
16:48:57	13 A No.	16:51:04	13 BY MR. COX:
16:48:58	14 Q Okay.	16:51:04	14 Q Who is responsible for establishing the
16:48:58	15 I know that's supposedly the policy on the	16:51:07	15 production goal for this gang?
16:49:00	16 railroad, but what I'm trying to find out is is	16:51:10	16 MR. SCHMITT: Objection, foundation.
16:49:04	17 there some way that we could make sure that that	16:51:12	17 BY MR. COX:
16:49:08	18 occurred on extremely hot days like July 26th?	16:51:12	18 Q If you know.
16:49:14	19 In other words, be sure that you and	16:51:13	19 A That would be our upper management.
16:49:16	20 Linford, as the supervisors of this gang, could be	16:51:15	20 Q And what is the production goal?
16:49:19	21 sure that everybody is getting a 15-minute break	16:51:21	21 What do we mean by that when we talk
16:49:22	22 every hour?	16:51:23	22 about -- on the job briefing form, when we talk
16:49:23	23 A Yeah, if we see them, we will ask -- we	16:51:25	23 about a -- when we talk about today's goal?
16:49:26	24 will ask the employees and they will tell us the	16:51:31	24 Do you see what I'm talking about right
16:49:28	25 truth if they are not getting their breaks. We ask	16:51:32	25 there?

Page 50		Page 52	
16:51:33	1 Who determines what each day's goal is for	16:53:58	1 Q And you had indicated as far as the breaks
16:51:39	2 feet of track laid?	16:54:00	2 that were taking place, it's a 15- to 20-minute
16:51:40	3 A That's what the railroad puts -- what we	16:54:03	3 break every hour, and that's a mandatory minimum
16:51:43	4 are told to try to do. If that's 1. -- or	16:54:06	4 when you have the extreme heat procedures you had
16:51:46	5 whatever -- one mile. That's what they want to do	16:54:08	5 indicated, correct?
16:51:49	6 so we could be productive and cost effective.	16:54:09	6 A Yes, sir.
16:51:52	7 Q Okay.	16:54:10	7 Q And is it also the policy and procedure of
16:51:53	8 A That's how they determine that.	16:54:14	8 Union Pacific that any employee could take any
16:51:54	9 Q When is that goal communicated to you?	16:54:16	9 number of additional breaks that they want if they
16:51:58	10 Like, the night before? The morning before? A	16:54:19	10 feel that they would like to?
16:52:00	11 week before? How is that goal communicated to you?	16:54:20	11 A Yes, we let them know that.
16:52:04	12 A That's all determined how much time you	16:54:22	12 Q All right.
16:52:07	13 are going to give us, be able to stop the trains	16:54:23	13 So the 15 to 20 minutes doesn't mean that
16:52:10	14 for us. It varies. They are going to give us a	16:54:25	14 that's all a person gets? If they want more, they
16:52:12	15 five-hour day, of course, it's going to be smaller.	16:54:28	15 get more?
16:52:17	16 If they are going to be ten hours, stopping	16:54:28	16 A Yes.
16:52:19	17 trains -- so it's basically cost effectiveness. So	16:54:28	17 Q And you had testified that the employee
16:52:22	18 the more you can do, the more the company saves	16:54:31	18 has a responsibility in regards to making sure that
16:52:25	19 money, of course. That's what we are, a production	16:54:36	19 they are taking appropriate actions in regards to
16:52:29	20 gang.	16:54:39	20 whatever the heat is that day and to take care of
16:52:30	21 Q And "that's what we are, a production	16:54:42	21 themselves?
16:52:32	22 gang," what do you mean by that?	16:54:42	22 A Yes.
16:52:34	23 A Well, we do our job. You know, we are	16:54:42	23 Q All right.
16:52:37	24 there to do a -- what they tell us to do, that's	16:54:44	24 I have heard some witnesses that have
16:52:40	25 what we do, our production. That's what we are.	16:54:45	25 testified that no one knows their body better than
Page 51		Page 53	
16:52:45	1 We are a relay gang and that's what we do.	16:54:49	1 the actual employee himself or herself.
16:53:22	2 MR. COX: Okay.	16:54:53	2 Is that preached on the railroad?
16:53:23	3 Mr. Diaz, that's all of the questions I	16:54:55	3 A That's correct.
16:53:24	4 have. Thank you, sir.	16:54:55	4 Q All right.
16:53:26	5 THE WITNESS: Okay.	16:54:58	5 Now, in regards to this testimony or the
16:53:27	6	16:55:04	6 policies or the practices in determining when
16:53:27	7 EXAMINATION	16:55:08	7 someone needs to get off the track or what have
16:53:27	8 BY MR. SCHMITT:	16:55:10	8 you, and when an employee should be making a
16:53:27	9 Q Mr. Diaz, I want to ask you some	16:55:13	9 decision -- I'm just going to ask you this: And we
16:53:29	10 follow-ups.	16:55:16	10 will just take an extreme example -- if you, for
16:53:30	11 In regards to these production goals, is	16:55:18	11 example, have an employee that is unconscious, are
16:53:32	12 it fair to say that regardless of what the goals	16:55:22	12 you going to make that decision for that employee
16:53:33	13 are, that you are going to be acting consistent	16:55:25	13 himself or herself and take that person to the
16:53:35	14 with whatever the weather conditions are that day?	16:55:27	14 hospital?
16:53:38	15 You are going to take those into account and not	16:55:29	15 A Yes, while he is unconscious, yes.
16:53:41	16 work in a manner that would, you know, create a	16:55:33	16 Q Sure. And that's my point.
16:53:44	17 risk due to that -- due to the temperatures just to	16:55:35	17 Mr. Cox is asking you some questions, "Are
16:53:47	18 try to meet a goal?	16:55:37	18 you aware that an employee can't make their own
16:53:49	19 A No.	16:55:39	19 decisions" -- is it fair to say that when an
16:53:49	20 Q Is that true?	16:55:44	20 employee -- I mean, are you looking for whether or
16:53:50	21 A No, we don't do that. We just do what we	16:55:45	21 not they appear to be confused or can communicate
16:53:52	22 can.	16:55:48	22 with you appropriately?
16:53:52	23 Q All right.	16:55:50	23 Is that one of the things that you are
16:53:53	24 A That's what we ask of our men, "Do what	16:55:51	24 trying to assess when you are talking to them?
16:53:57	25 you can."	16:55:53	25 A Yes.

Page 54

16:55:53 1 Q All right.
 16:55:54 2 If you have a concern that the individual
 16:55:55 3 is confused or doesn't appear as though they are
 16:55:58 4 able to appropriately evaluate themselves, and you
 16:56:04 5 know, be conscious and alert and aware, are you in
 16:56:07 6 that scenario, going to make the decision for them
 16:56:10 7 and take them to the hospital?
 16:56:11 8 A Yes, I would take them if I saw that, yes.
 16:56:14 9 Q Sure.
 16:56:15 10 All right.
 16:56:16 11 At any time, did Mr. Herrera indicate to
 16:56:18 12 you or give you a concern that he was somehow
 16:56:21 13 unable to -- inadequate to accurately assess his
 16:56:25 14 own condition and tell you when he wanted to go to
 16:56:28 15 the hospital?
 16:56:29 16 A No, because I asked them, "If you needed
 16:56:32 17 to go, would you let me know?" He said he would.
 16:56:36 18 First he said, "No, no, I don't need to go." And
 16:56:39 19 then at 4:30, he said, "Can you take me?"
 16:56:43 20 I said, "For sure, I will take you."
 16:56:46 21 Q And you immediately took him as soon as he
 16:56:49 22 asked?
 16:56:50 23 A Yes.
 16:56:50 24 Q All right.
 16:56:51 25 In regards to these questions about

Page 55

16:56:54 1 measuring temperature -- there's been some
 16:56:56 2 testimony -- are there people out on the gang that
 16:56:59 3 are taking -- assessing the heat index and the
 16:57:02 4 actual condition of the heat index at the track
 16:57:05 5 area on your gang throughout the day?
 16:57:07 6 A Yes, we do them at every station. We put
 16:57:12 7 the air temperature, ambient temperature and rail
 16:57:15 8 temperature on our -- our stations, we put it on
 16:57:20 9 the rail.
 16:57:21 10 Q All right.
 16:57:22 11 You are assessing, or whoever is doing
 16:57:24 12 this work, they are looking at the air temperature,
 16:57:27 13 the humidity, whatever the conditions are, to
 16:57:28 14 assess the actual heat index for the actual
 16:57:31 15 employees that are working at this actual track?
 16:57:34 16 A Yes.
 16:57:35 17 Q All right.
 16:57:36 18 So this issue of these measurements and
 16:57:39 19 whether or not you should add ten degrees here or
 16:57:43 20 15 degrees there, or whatever it might be, is it
 16:57:46 21 fair to say that the measurements that are taken is
 16:57:49 22 what are based on the actual track conditions
 16:57:52 23 themselves at the track?
 16:57:55 24 A Yes.
 16:57:56 25 MR. COX: Form and foundation.

Page 56

16:57:57 1 THE WITNESS: Yes, that's why we go by on
 16:58:00 2 a number we put on the track. We do -- you do put
 16:58:03 3 it throughout our stations, our ambient and our
 16:58:06 4 rail temperature.
 16:58:08 5 BY MR. SCHMITT:
 16:58:08 6 Q All right.
 16:58:09 7 Now, this issue in regards to -- at the
 16:58:16 8 hospital, and Bobby Steely and you both accompanied
 16:58:21 9 Mr. Herrera to the hospital; is that right?
 16:58:23 10 A Yes.
 16:58:23 11 Q And Bobby Steely had testified that he was
 16:58:26 12 a good friend of Mr. Herrera.
 16:58:28 13 Was that your understanding, too?
 16:58:30 14 A Yes, he has been with the gang longer.
 16:58:32 15 That's why.
 16:58:32 16 Q Sure.
 16:58:33 17 And as I understand what you had indicated
 16:58:36 18 earlier, at some point in time, you do go back to
 16:58:40 19 the doorway or back by the room where Mr. Herrera
 16:58:42 20 is located; is that true?
 16:58:46 21 A Yes.
 16:58:46 22 MR. COX: That misstates.
 16:58:47 23 BY MR. SCHMITT:
 16:58:47 24 Q Here is my question: Did you ever talk
 16:58:49 25 with Mr. Herrera about whether or not it was okay

Page 57

16:58:51 1 for you to be okay in the room with him? Did you
 16:58:54 2 ask him that?
 16:58:55 3 A No, no. I just -- I was just right
 16:58:58 4 there --
 16:58:58 5 Q Okay.
 16:58:59 6 A -- making sure he was all right.
 16:59:01 7 Q All right.
 16:59:02 8 Did you ever have a conversation with
 16:59:03 9 Mr. Herrera asking him whether -- "Is it okay for
 16:59:06 10 me to be here?"
 16:59:07 11 MR. COX: Same question. Asked and
 16:59:08 12 answered. And identical question.
 16:59:11 13 THE WITNESS: No, no, I never asked him.
 16:59:13 14 MR. COX: Identical answer.
 16:59:14 15 BY MR. SCHMITT:
 16:59:14 16 Q Did Mr. Herrera ever indicate to you that
 16:59:18 17 he didn't want you in the room?
 16:59:20 18 A No.
 16:59:20 19 Q Did he ever say or do anything that made
 16:59:22 20 it appear to you that he was uncomfortable with you
 16:59:25 21 being there?
 16:59:26 22 A No.
 16:59:26 23 MR. COX: Form and foundation.
 16:59:28 24 THE WITNESS: Sorry. No, no, he did
 16:59:30 25 not.

Page 58

16:59:31 1 BY MR. SCHMITT:
 16:59:31 2 Q All right.
 16:59:32 3 As far as -- if I understand what you said
 16:59:33 4 earlier, you were in and out of the room? Or in
 16:59:36 5 and out -- you were leaving making calls kind of
 16:59:39 6 coming back and forth?
 16:59:40 7 A Yes.
 16:59:40 8 Q Was it Bobby Steely -- was he the one that
 16:59:45 9 was in the room the whole time?
 16:59:46 10 A I don't know if he was there in the room
 16:59:48 11 the whole time or not.
 16:59:48 12 Q Because you weren't there?
 16:59:49 13 A Yes.
 16:59:50 14 Q Is it fair to say that you were not the
 16:59:52 15 person that was in the room -- that you were never
 16:59:53 16 in the room the whole time? Is that true?
 16:59:55 17 A Yes, that's true.
 16:59:56 18 Q All right.
 17:00:00 19 In regards to these -- this conversation,
 17:00:05 20 did you ever talk with any doctors or nurses
 17:00:09 21 outside of Mr. Herrera's presence?
 17:00:12 22 A No.
 17:00:12 23 Q All right.
 17:00:14 24 And this conversation with the -- with the
 17:00:19 25 doctor -- when did that take place -- when the

Page 59

17:00:22 1 doctor was making these statements about he needs
 17:00:24 2 to have the next day off?
 17:00:26 3 A At the end of the -- the diagnoses he gave
 17:00:29 4 when he gave him the prescription pill or potassium
 17:00:33 5 that he told me he gave him.
 17:00:36 6 Q All right.
 17:00:37 7 A That's what he told me. He needs to take
 17:00:40 8 a day off. And I said, "That's fine. We'll have
 17:00:42 9 him off, then."
 17:00:42 10 Q This is a statement the doctor made to
 17:00:44 11 you?
 17:00:44 12 A Yes.
 17:00:45 13 Q You weren't going up to the doctor and
 17:00:46 14 asking this doctor for information, were you?
 17:00:48 15 A No.
 17:00:48 16 Q When the doctor made the statement to you,
 17:00:50 17 where was Mr. Herrera? Was he right there?
 17:00:53 18 A He was sitting on his bed.
 17:00:54 19 Q So the doctor makes this statement to you
 17:00:57 20 about taking the next day off and Mr. Herrera is
 17:01:00 21 sitting right there?
 17:01:01 22 A Yes.
 17:01:02 23 Q This is in his presence?
 17:01:03 24 A Yes.
 17:01:03 25 Q So at any time, did you ever speak with

Page 60

17:01:05 1 any of Mr. Herrera's health care providers
 17:01:09 2 individually one on one, outside of Mr. Herrera's
 17:01:12 3 presence?
 17:01:13 4 A No.
 17:01:13 5 Q All right.
 17:01:14 6 And is the only conversation that you ever
 17:01:16 7 had with this -- or that any conversation where you
 17:01:19 8 were present where the doctor was saying something
 17:01:21 9 is what you just told us at the time of discharge
 17:01:23 10 when he said he needs to be off the next day?
 17:01:27 11 A Yes.
 17:01:27 12 Q That's the only conversation?
 17:01:28 13 A Yes.
 17:01:35 14 Q And I think you said earlier that as far
 17:01:37 15 as the nurses -- if there were any statements with
 17:01:41 16 the nurses, were any statements or conversations
 17:01:42 17 that took place -- were they always with
 17:01:45 18 Mr. Herrera being right there and being present?
 17:01:48 19 A Yes.
 17:01:48 20 Q All right.
 17:01:50 21 Bobby Steely said that -- he testified
 17:01:52 22 that he was talking with Mr. Herrera throughout the
 17:01:55 23 time that he was in the -- in his room and joking
 17:01:58 24 with him and things like that.
 17:02:01 25 Is that your understanding -- at least

Page 61

17:02:01 1 when you were there?
 17:02:02 2 A Yes, they talked. He was talking to us.
 17:02:05 3 Q All right.
 17:02:06 4 A Again, as they were administering the IV.
 17:02:09 5 He was talking in the lobby.
 17:02:11 6 Q All right.
 17:02:15 7 A He thanked us for being there, being with
 17:02:18 8 him and stuff like that.
 17:02:19 9 Q When Mr. Herrera thanked you for being
 17:02:21 10 present there, did you take that, in your mind,
 17:02:23 11 that he was happy that you were there, that he was
 17:02:26 12 consenting to you being present in that room?
 17:02:28 13 MR. COX: I'm going to object. Form and
 17:02:30 14 foundation.
 17:02:31 15 THE WITNESS: No, not where they
 17:02:33 16 consented, no. We were just being there with him.
 17:02:35 17 You know?
 17:02:39 18 BY MR. SCHMITT:
 17:02:39 19 Q Did Mr. Herrera ever ask you to stay -- to
 17:02:42 20 stay with him?
 17:02:43 21 A He never said not to. You know, he was
 17:02:46 22 just -- we were just there, you know, as a friend.
 17:02:51 23 You know? That's what we were doing. We were just
 17:02:53 24 making -- just checking for his well-being.
 17:02:57 25 Q And you have testified earlier to Mr. Cox

Page 62			Page 64		
17:02:59	1	that you were concerned about him?	17:07:54	1	MR. COX: Okay.
17:03:00	2	A Sure.	17:07:56	2	(Deposition concluded at 5:07 p.m.)
17:03:04	3	Q All right.		3	
17:03:08	4	MR. SCHMITT: That's all I have. Thank		4	
17:03:09	5	you very much.		5	
17:03:10	6			6	
17:03:10	7	FURTHER EXAMINATION		7	
17:03:10	8	BY MR. COX:		8	
17:03:10	9	Q I'm interested, Mr. Diaz -- are you a		9	
17:03:12	10	friend of Guillermo Herrera's?		10	
17:03:14	11	A Well, he was a coworker --		11	
17:03:17	12	Q Okay.		12	
17:03:17	13	A -- I should say.		13	
17:03:19	14	Q Okay.		14	
17:03:27	15	I think I asked -- I know I did ask -- do		15	
17:03:34	16	you -- have you ever seen a -- strike that.		16	
17:03:38	17	Just give me one minute. Here, let's go		17	
17:03:40	18	off the record one second. I have got to find a		18	
17:03:42	19	document.		19	
17:03:44	20	THE VIDEOGRAPHER: We are going off the		20	
17:03:45	21	record.		21	
17:04:14	22	(Recess taken.)		22	
17:04:14	23	THE VIDEOGRAPHER: We are back on the		23	
17:04:15	24	record.		24	
17:04:16	25	MR. COX: That's all of the questions I		25	
Page 63			Page 65		
17:04:17	1	have, Mr. Diaz. Thanks for coming down.		1	
17:04:19	2	THE WITNESS: Okay.		2	
17:04:21	3	MR. SCHMITT: Nothing further. I will		3	
17:04:22	4	reserve the rest of my questions until the time of		4	
17:04:24	5	the trial.		5	
17:04:26	6	THE VIDEOGRAPHER: This is the end of		6	
17:04:27	7	media number 1, and marks the conclusion of today's		7	
17:04:30	8	deposition of Carlos Diaz.		8	
17:04:33	9	We are off the record.		9	I, CARLOS DIAZ, declare under
17:04:44	10	MR. SCHMITT: You have the right to read		10	penalty of perjury under the laws of the
17:04:45	11	and sign your deposition -- which means that it		11	State of California that the foregoing is
17:04:49	12	will be mailed to you, you will have to read it		12	true and accurate.
17:04:50	13	over. You will have 30 days then to sign it and		13	Executed at _____,
17:04:54	14	mail it back to the court reporter, or you can just		14	California, this _____ day of _____,
17:04:56	15	waive that right.		15	2016.
17:04:58	16	It's entirely up to you what you would		16	
17:04:59	17	like to do, but you just need to let the court		17	
17:05:04	18	reporter know.		18	
17:05:04	19	THE WITNESS: What do you mean?		19	
17:05:06	20	MR. SCHMITT: It's your decision. Many		20	
17:05:07	21	witnesses waive, but if you would like it sent to		21	
17:05:10	22	you --		22	
17:05:10	23	THE WITNESS: Yes, we can waive it. It's		23	
17:05:13	24	what happened. So I will waive.		24	
17:05:16	25	MR. SCHMITT: All right.		25	

1 REPORTER'S CERTIFICATE

2
3 I, VICTORIA IMHOF WERTZ, RPR, CSR NO.
4 7999, Certified Shorthand Reporter, certify:

5 That the foregoing proceedings were
6 taken before me at the time and place therein set
7 forth, at which time the witness was put under oath
8 by me;

9 That the testimony of the witness and
10 all objections made at the time of the examination
11 were recorded stenographically by me and were
12 thereafter transcribed;

13 That the foregoing is a true and
14 correct transcript of my shorthand notes so taken.

15 I further certify that I am not a
16 relative or employee of any attorney or of any of
17 the parties, nor financially interested in the
18 action.

19 Dated this 21st day of June, 2016.

20
21
22
23 _____
24 VICTORIA IMHOF WERTZ, RPR, CSR No. 7999
25

1 REPORTER CERTIFICATION OF CERTIFIED COPY

2
3
4
5 I, VICTORIA IMHOF WERTZ, RPR, CSR
6 No. 7999, a Certified Shorthand Reporter in
7 the State of California, certify that the
8 foregoing pages 1 through 66 constitute a
9 true and correct copy of the original
10 deposition of CARLOS DIAZ, taken on
11 June 9th, 2016.

12 I declare under penalty of perjury
13 under the laws of the State of California
14 that the foregoing is true and correct.

15 Dated this 21st day of June,
16 2016.

17
18
19
20
21
22 _____
23 VICTORIA IMHOF WERTZ, RPR, CSR No. 7999
24
25